Subramaniam a/l Vellasamy v Pentadbir Tanah Daerah Klang & Anor and other appeals

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COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NOS B-01(A)-130–02 OF 2024, B-01(A)-131–02 OF 2024 AND B-01(A)-132–02 OF 2024
AZMAN ABDULLAH, AHMAD FAIRUZ AND LIM HOCK LENG JJCA
24 SEPTEMBER 2025

C

Land Law — Acquisition of land — Withdrawal of acquisition — Three years after issuing Form H under Land Acquisition Act 1960 ('the LAA') and offering land owners compensation but not having paid the same, State Authority notified via Gazette publication that land had been withdrawn from compulsory acquisition — Land owners filed proceedings to quash withdrawal decision and to compel payment of compensation — Whether since there was no evidence to show acquirer had taken possession of the land State Authority was entitled to withdraw subject land from acquisition under s 35(1) of the LAA — Whether land owners were not entitled to any compensation as they were not deprived of their lands

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E

The three appellants herein were registered owners of sub-lots within a 1.0572-hectare plot of land ('the land') which was compulsorily acquired by the government for a highway project. Following an inquiry under the Land Acquisition Act 1960 ('the LAA'), the first respondent ('R1') issued a Form H offering the appellants a total sum of RM1,548,650 as compensation for the land acquisition. The appellants accepted the compensation amount but were never paid. Instead, three years later, the second respondent published notices in the Government *Gazette* stating that the acquisition of the land had been withdrawn and that there would be a fresh compulsory acquisition of only 0.8799 hectares of the land ('the reduced acquisition'). The appellants filed judicial review applications to, inter alia, quash the respondents' aforesaid decision on the ground that it was void, unlawful, ultra vires, invalid and an abuse of process. They sought a declaration that R1 had already taken possession of, or was deemed to have taken possession of, the land pursuant to the provisions of the LAA. A mandamus order was sought to compel R1 to complete the original acquisition of the land and to pay the appellants their respective compensation amounts together with interest. The instant appeals were against the High Court's dismissal of the judicial review applications.

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Held, unanimously dismissing the appeals and affirming the High Court's decision:

(1) Section 18 of the LAA clearly envisaged situations where actual possession of subject land was taken at the same time as, or prior to, or at

any time after, the service of the Form H. Section 22(1) of the LAA, on the other hand, allowed for formal possession of the land to be effected via the service of Form K. In a nutshell, if the Form H was not preceded, accompanied or followed by actual possession, and if there was no formal possession through service of the Form K, the State Authority was at liberty to withdraw from the compulsory acquisition (see paras 22–25).

(2) In the instant case, since there was no evidence that any actual possession of the subject land had been taken, and it was an objective fact that Form K was not issued, R1 was at liberty to withdraw from the compulsory acquisition of the 1.0572 hectares and to re-commence with compulsory acquisition of only 0.8799 hectares of the land. That decision could not be said to be tainted with illegality, irrationality, unreasonableness or procedural impropriety (see paras 27–28).

(3) There could be no legitimate expectation on the part of the appellants to receive any compensation or interest thereon when possession of the subject land had yet to be taken, much less when the original acquisition had been lawfully withdrawn in compliance with the prescribed forms and publications in the *Gazette*. The appellants were not deprived of their respective properties otherwise than in compliance with the law. They would have to be paid adequate compensation for the resumed acquisition, but that was another matter. In the circumstances, there was no contravention of art 13 of the Federal Constitution (see paras 29–32).

(4) The decision to withdraw from the compulsory acquisition of the whole land and to acquire only a smaller portion thereof could not be said to be devoid of reason. The reason was apparent from the Form E issued by R1 and the *Gazette* publications put up by the second respondent. Hence, the decision was not contrary to the principle that public authorities must provide reasons for their decisions particularly where rights were adversely affected (see paras 34–36).

[Bahasa Malaysia summary

Tiga orang perayu dalam rayuan ini ialah pemilik berdaftar sublot-sublot dalam sebidang tanah seluas 1.0572 hektar ('tanah tersebut') yang telah diperoleh secara paksa oleh Kerajaan bagi tujuan projek lebuh raya. Setelah satu siasatan dijalankan di bawah Akta Pengambilan Tanah 1960 ('APT'), responden pertama ('R1') telah mengeluarkan Borang H menawarkan kepada perayu-perayu jumlah pampasan keseluruhan sebanyak RM1,548,650 bagi pengambilan tanah tersebut. Para perayu menerima jumlah pampasan itu tetapi tidak pernah dibayar. Sebaliknya, tiga tahun kemudian, responden kedua menyiarkan notis-notis dalam Warta Kerajaan menyatakan bahawa pengambilan tersebut telah ditarik balik, dan bahawa akan dibuat satu pengambilan paksa yang baharu hanya meliputi 0.8799 hektar daripada tanah tersebut ('pengambilan baharu yang dikurangkan'). Perayu-perayu

kemudiannya memfailkan permohonan semakan kehakiman untuk, antara lain, membatalkan keputusan responden yang didakwa batal, tidak sah, ultra vires, melampaui kuasa dan merupakan penyalahgunaan proses. Para perayu turut memohon satu deklarasi bahawa R1 telah pun mengambil milikan, atau dianggap telah mengambil milikan, ke atas tanah tersebut menurut peruntukan APT. Perintah mandamus turut dipohon bagi memaksa R1 menyempurnakan pengambilan asal dan membayar kepada para perayu jumlah pampasan masing-masing berserta faedah. Rayuan-rayuan ini adalah terhadap keputusan Mahkamah Tinggi yang menolak permohonan semakan kehakiman tersebut.

Diputuskan, sebulat suara mengenepikan rayuan-rayuan dan mengekalkan keputusan Mahkamah Tinggi:

(1) Peruntukan s 18 Akta Pengambilan Tanah 1960 ('APT') dengan jelas memperuntukkan keadaan di mana pengambilan milikan sebenar ke atas tanah boleh berlaku sama ada ketika, sebelum, atau pada bila-bila masa selepas penyampaian Borang H. Manakala s 22(1) APT pula membenarkan pengambilan milikan secara formal dibuat melalui penyampaian Borang K. Secara ringkasnya, jika Borang H tidak didahului, tidak disertai, atau tidak diikuti dengan pengambilan milikan sebenar, dan jika tiada pengambilan milikan secara formal melalui Borang K, maka Pihak Berkuasa Negeri bebas untuk menarik balik pengambilan secara paksa tersebut (lihat perenggan 22–25).

(2) Dalam kes ini, memandangkan tiada keterangan bahawa milikan sebenar tanah tersebut pernah diambil, dan adalah fakta objektif bahawa Borang K tidak pernah dikeluarkan, maka R1 adalah berhak untuk menarik balik pengambilan secara paksa ke atas 1.0572 hektar tanah tersebut dan memulakan semula satu pengambilan baharu ke atas hanya 0.8799 hektar tanah. Keputusan tersebut tidak boleh dianggap sebagai dicemari dengan sebarang unsur menyalahi undang-undang, ketidakrasionalan, ketidakmunasabahan, atau ketidakpatuhan prosedur (lihat perenggan 27–28).

(3) Tiada jangkaan sah bagi pihak perayu-perayu untuk menerima sebarang pampasan atau faedah ke atasnya apabila pemilikan tanah berkenaan belum lagi diambil, apatah lagi apabila pengambilan asal tersebut telah pun ditarik balik secara sah menurut borang-borang yang ditetapkan dan melalui pewartaan dalam Warta Kerajaan. Perayu-perayu tidak dilucutkan harta mereka selain menurut peruntukan undang-undang. Mereka hanya berhak kepada pampasan yang mencukupi bagi pengambilan semula tersebut, namun itu adalah perkara berasingan. Dalam keadaan ini, tiada berlakunya pelanggaran perkara 13 Perlembagaan Persekutuan (lihat perenggan 29–32).

(4) Keputusan untuk menarik balik pengambilan keseluruhan tanah

tersebut dan untuk hanya mengambil sebahagian kecil daripadanya tidak boleh dikatakan sebagai keputusan yang tidak bersebab. Alasannya jelas daripada Borang E yang dikeluarkan oleh R1 serta pewartaan oleh responden kedua. Oleh itu, keputusan tersebut tidak bercanggah dengan prinsip undang-undang bahawa pihak berkuasa awam mesti memberikan alasan terutamanya apabila keputusan mereka menjejaskan hak mana-mana pihak (lihat perenggan 34–36).]

Cases referred to

Fun Fatt (sebagai pentadbir dan benefisiari tunggal harta pusaka Lo Pang @ Fun Lim, si mati) v Datuk Bandar Kuala Lumpur [2021] MLJU 2208; [2021] CLJU 1703, HC (refd)

Harpers Trading (M) Sdn Bhd v National Union of Commercial Workers [1991] 1 MLJ 417, SC (refd)

Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-Sama Serbaguna Sungai Gelugor dengan Tanggungan [1999] 3 MLJ 1, FC (refd)

Pengarah Tanah dan Galian Selangor & Anor v PNSB Acmar Sdn Bhd & Anor and another appeal [2024] 1 MLJ 507; [2024] 1 CLJ 409, CA (refd)

Legislation referred to

Federal Constitution art 13

Government Proceedings Act 1956 s 33

Land Acquisition Act 1960 ss 8, 14, 18, 22, 22(1), 32(1), (1C), 35, 35(1), Forms E, F, H, K, LB

Appeal from: *Subramaniam a/l Vellasamy lwn Pentadbir Tanah Daerah Klang dan satu lagi* [2024] MLJU 497 (High Court, Shah Alam)

Lim Jit Kiong (with Lin Chia Yi and Amanda Yee Wen Kay) (JK Lim) for the appellant.

Noor Fadzila bt Ishak (with Nur Aifaa bt Che Abdullah) (Attorney General's Chambers) for the first respondent.

Hani Aziza Ismail) (with Etty Eliany Tesno and Nor Fariza Ridzuan) (Selangor State Legal Advisor's Office) for the second respondent.

Lim Hock Leng JCA:

INTRODUCTION

[1] There are before us three related appeals, each brought by the registered owner (Subramaniam a/l Vellasamy, T Mohan a/l Ellen @ Thandavamurthi, and Balasumathi a/p Ellen) of sub-lots in a parcel of land against the dismissal of their applications for judicial review by the learned High Court judge ('HCJ') in relation to the decision by the Land Administrator of Klang and the Director of Lands and Mines of Selangor to simultaneously withdraw and

re-commence the acquisition of their respective sub-lots of land on the same day. These appellants will be referred to as the first, second, and third appellants respectively. Their sub-lots of land, held under title GRN 200413, Lot 10433 in the Klang District, will be referred to as the subject land or the subject lands, depending on whether the reference is in a singular or plural context. With the other sub-lots, the total area added up to 1.0572 hectares.

[2] The appeals were heard together as they were premised on common salient facts, and the applications for judicial review had been heard and decided together.

BACKGROUND FACTS

[3] The subject lands were compulsorily acquired by the Land Administrator of Klang (the first respondent) for the purpose of 'Projek Lebuhraya Persisiran Pantai Barat ('LPB') Daerah Klang, Selangor'.

[4] The second respondent had published a notice of the compulsory acquisition in the *Gazette* on 8 October 2015.

[5] The publication was followed by a notice of inquiry in Form E and a notice to require evidence in writing in Form F.

[6] The appellants then appointed Messrs Niza Din & Co to value the subject lands in order to determine a fair and just amount of compensation.

[7] At the end of the inquiry, pursuant to s 8 of the Land Acquisition Act 1960, the first respondent issued Form H with offers of compensation to the appellants as follows:

(a) Subramaniam a/l Vellasamy RM475,000;

(b) T Mohan a/l Ellen @ Thandavamurthi RM528,650; and

(c) Balasumathi a/p Ellen RM545,000.

[8] All the appellants accepted the offers in July 2018, and signed on Form H accordingly.

[9] By letter dated 2 October 2018, the Ministry of Works wrote to the Ketua Pengarah Lembaga Lebuhraya Malaysia to make payment to the appellants as per the Form H sum/compensation award.

[10] It is not disputed that the appellants had asked for the compensation awards on various occasions but to no avail. There was thus no payment made

after acceptance of the Form H compensation award.

[11] However, on 27 May 2021, declarations were published in Selangor State Government *Gazette* No 1351 and Selangor State Government *Gazette* No 1350 for the withdrawal of the acquisition of the entire parcel of land totalling 1.0572 hectares and for the resumption of acquisition of part of the entire land totalling 0.8799 hectares.

[12] Subsequently, the first respondent issued notices withdrawing the compulsory acquisition vide the Form LB dated 15 December 2021.

[13] At the same time, the appellants also received Form E and Form F, both dated 15 December 2021, for the compulsory acquisition of the subject lands.

[14] The appellants claim that it was only on 12 January 2022 that they were informed for the first time that the withdrawal and recommencement of the compulsory acquisition of the subject lands were for cost-related reasons.

[15] Aggrieved by the withdrawal of the original land acquisition and the simultaneous resumption of the acquisition, the appellants applied for judicial review. Leave was granted.

[16] In summary, the appellants sought, inter alia:

(i) an order of certiorari to quash the first respondent's decision to issue the notice of withdrawal of the original acquisition vide Forms LB, the Forms E and Forms F, all dated 15 December 2021;

(ii) an order of certiorari to quash the decision of the second respondent to make the declaration of acquisition of the subject lands vide the State *Gazette* Selangor No 1350 dated 27 May 2021, and also the notice of withdrawal of acquisition of the subject lands vide the State *Gazette* Selangor No 1351 dated 27 May 2021;

(iii) a declaration/order that the first respondent's decisions in prayer (i) are void, ultra vires, unlawful, invalid and/or an abuse of process;

(iv) a declaration/order that the second respondent's decisions in prayer (ii) are void, ultra vires, unlawful, invalid and/or an abuse of process;

(v) a declaration/order that the first respondent has fully taken possession of the subject lands;

(vi) a declaration/order that the first respondent be deemed to have taken possession of the subject lands on 29 December 2017, that is, three months from the date of the Forms H, pursuant to ss 18 and 35 of the Land Acquisition Act 1960;

(vii) a declaration/order that the first and second respondents be restrained from withdrawing or cancelling the acquisition of the subject lands;

(viii) an order of mandamus that the first respondent be directed to complete the acquisition of the subject lands by issuing and serving Form K pursuant to s 22 of the Land Acquisition Act 1960;

(ix) interest on the amounts awarded to each of the appellants at the rate of 5%pa from 29 December 2017 until the date of full settlement;

(x) certificates be issued by this court to the appellants under s 33 of the Government Proceedings Act 1956 against the first respondent to pay the awarded sums within 14 days from the date of delivery of the said certificate to the Selangor State Bar Association, together with the said interest;

(xi) costs; and

(xii) any other relief deemed fit or just.

THE APPELLANTS' ARGUMENTS

[17] The appellants premised their case on various grounds.

[18] The appellants' main contention is that the respondents had effectively taken possession of the subject lands upon service of the Form H on the appellants, thereby completing the acquisition process in accordance with the Land Acquisition Act 1960.

[19] They relied on s 18 of the Land Acquisition Act 1960 which provides, inter alia, that:

> the 'Land Administrator may take possession (a) of any land in respect of which an award has been made under section 14, such possession being taken at the time of the service upon the occupier of such land of a notice in Form H, or at any time thereafter'.

[20] In respect of s 35(1) of the Land Acquisition Act 1960 which states:

> 'The State Authority shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken', they argued that the withdrawal of any acquisition is only valid if possession has not been taken. In elaboration, they submitted that in this case, possession was taken 'upon the service of Form H on the appellant, in accordance with the clear meaning and operation of Sections 18 and 35 of the LAA. The service of Form H is a statutory act sufficient to effect possession under the LAA and does not require the additional step of formal possession under Section 22'.

[21] We are unable to agree with the appellants' contention.

[22] Section 18 clearly envisages situations where actual possession is taken at the same time as, or even prior to, service of the Form H. Such was the case in *Fun Fatt (sebagai pentadbir dan benefisiari tunggal harta pusaka Lo Pang @ Fun Lim, si mati) v Datuk Bandar Kuala Lumpur* [2021] MLJU 2208; [2021] CLJU 1703 where the defendant had taken possession of the subject land prior to the service of the Form H on 9 October 2017. The passage in the judgment cited by the appellants must therefore be read subject to the fact of actual possession prior to service of the Form H:

> By plain reading of s 18(a) of the Act the second respondent had taken possession of the land upon service of Form H. Possession of the land had been taken by DF3 and DBKL, by permission of the second respondent, and work had commenced and was continuing, and this could be seen from the colour photographs of the works being carried out on the land. Further, evidence of DF3's occupation on the land was obvious as the safety cones been labelled as 'DUKE EKOVEST'. DF3's letter to LLM confirming that there would be no change in the design of the highway clearly showed DF3's intention to remain on the land and continue with the construction and completion of the highway despite the alleged withdrawal of the acquisition. The respondents had taken possession of the land under s 18(a) of the Act and it could not be withdrawn as it contravened s 35(1) of the Act (see paras 17 & 19–21).

[23] Section 18 also envisages situations when actual possession is taken 'at any time thereafter'.

[24] Section 22(1) of the Land Acquisition Act 1960 provides for formal possession. It states: 'The Land Administrator shall take formal possession of any scheduled land by serving upon the occupier thereof or, if he cannot be found, by posting thereon, a notice in Form K'.

[25] In a nutshell, where the Form H is not preceded, accompanied or followed by actual possession, and there is no formal possession through service of the Form K, the State Authority is at liberty to withdraw from the compulsory acquisition.

[26] In this regard, we respectfully refer to *Pengarah Tanah dan Galian Selangor & Anor v PNSB Acmar Sdn Bhd & Anor and another appeal* [2024] 1 MLJ 507; [2024] 1 CLJ 409 where Azizul JCA, in delivering the judgment of the Court of Appeal, succinctly held that once:

(a) actual physical possession of the land is taken; or

(b) the Form K is issued, the compulsory acquisition can no longer be withdrawn.

[27] We agree with the respondents that there is no evidence that they had in any way taken actual possession of any of the subject lands, and it is an objective fact that Form K has not been issued. A

[28] As such, the first respondent was at liberty to withdraw from the compulsory acquisition of the entire land measuring 1.0572 hectares and to recommence compulsory acquisition of only 0.8799 hectares. The decision cannot be said to be tainted with illegality, irrationality and procedural impropriety, or 'unreasonableness' in the context of the Supreme Court's decision in *Harpers Trading (M) Sdn Bhd v National Union of Commercial Workers* [1991] 1 MLJ 417. B C

[29] It follows that there can be no legitimate expectation on the part of the appellants to receive compensation when possession has yet to be taken of the subject lands, much less when the original acquisition had been lawfully withdrawn in compliance with the prescribed Forms and publications in the *gazette*. D

[30] Since the appellants are not entitled to the compensation or award as per the original Form H, there ought not to be any award of interest under s 32(1) read together with s 32(1C) of the Land Acquisition Act 1960. E

[31] As at the date of the last affidavit, the appellants had not been deprived of their respective property otherwise than in compliance with the law. They will have to be paid adequate compensation for the resumed acquisition, but that is another matter. It was not a matter before the learned HCJ. F

[32] In the upshot, there is no contravention of art 13 of the Federal Constitution which provides that 'no person shall be deprived of property save in accordance with law', and 'no law shall provide for compulsory acquisition or use of property without adequate compensation'. G

[33] While learned counsel for the appellants orally argued that the respondents did not expressly highlight the reduction in the land as the reason for the withdrawal and recommencement of the compulsory acquisition, there was affidavit evidence on the reduced land area to be acquired vide the publications in the State *Gazette* Selangor No 1350 and No 1351. H

[34] The decision to withdraw from the compulsory acquisition of the entire land, and to commence the compulsory acquisition for a smaller part of the entire land, cannot be said to be devoid of reason. I

[35] The reason for the withdrawal from the compulsory acquisition of

A 1.0572 hectares and commencement of the compulsory acquisition of 0.8799 hectares is apparent from the Form E issued by the first respondent, and the *gazette* publications put up by the second respondent.

B **[36]** Hence, the decision is not contrary to the principle that public authorities must provide reasons for their decisions, particularly where rights are adversely affected, as enunciated by the Federal Court in *Majlis Perbandaran Pulau Pinang v Syarikat Bekerjasama-Sama Serbaguna Sungai Gelugor dengan Tanggungan* [1999] 3 MLJ 1.

C CONCLUSION

[37] For the reasons given, we are of the unanimous view that the appeals are to be dismissed. The learned HCJ's dismissal of the judicial review applications is hereby affirmed.

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[38] We make no order as to costs, considering that the appellants, though no fault of theirs, have yet to receive their compensation.

E *Appeals dismissed and High Court's decision affirmed.*

Reported by Ashok Kumar

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